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IN THE
Supreme Court of the United States

UNIVERSITY OF ALABAMA AT BIRMINGHAM, BOARD OF TRUSTEES, *et al.*,
Petitioners,

v.

PATRICIA GARRETT, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

STATEMENT OF FORMER PRESIDENT GEORGE H.W. BUSH AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

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STATEMENT OF FORMER PRESIDENT GEORGE H.W. BUSH AS *AMICUS CURIAE* IN SUPPORT OF THE RESPONDENTS[1]

INTEREST OF *AMICUS CURIAE*

As the President who pressed for the enactment of the Americans with Disabilities Act ("ADA") and signed it into law, I have a direct and personal interest in the defense of the ADA and the preservation of the important safeguards it provides to disabled Americans.

STATEMENT

On July 26, 1990, I had the privilege and honor of signing into law the ADA, comprehensive civil rights legislation intended to signal the end to unjustified segregation and exclusion of persons with disabilities from mainstream American life. *See Statement on Signing the Americans with Disabilities Act of 1990*, 2 Pub. Papers 1070, 1071 (July 26, 1990) ("*ADA Signing Statement*") (App. 3a). With the signing of the ADA, every man, woman, and child with a disability could pass through once-closed doors into a bright new era of equality, independence, and freedom. *See Remarks on Signing the Americans with Disabilities Act of 1990*, 2 Pub. Papers 1067, 1068 (July 26, 1990) ("*ADA Signing Remarks*") (App. 6a).

July 26, 1990 was a landmark occasion for me and for all Americans because, with the signing of the ADA, our country made an unequivocal statement to the world that Americans will not accept, will not excuse, and will not tolerate discrimination against persons with disabilities. *See*

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[1] Letters from the parties consenting to the filing of this statement are on file with the Clerk of the Court. No counsel for a party authored this statement in whole or in any part. No one other than Former President George H.W. Bush and his counsel made a monetary contribution to the preparation or submission of this statement.

ADA Signing Remarks at 1069 (App. 10a). The ADA works because it embodies what must be at the heart of all civil rights struggles—the spirit of inclusiveness, the devotion to individual rights, and equal opportunity. *See Remarks Commemorating the First Anniversary of the Signing of the Americans with Disabilities Act of 1990*, 2 Pub. Papers 963, 964 (July 26, 1991) (App. 12a). It ensures that no disabled American will ever again be deprived of the basic guarantee of life, liberty, and the pursuit of happiness. *See ADA Signing Remarks* at 1068 (App. 7a).

The ADA was enacted to address discrimination against persons with disabilities that permeated our society, including discrimination by public agencies in such areas as employment and the delivery of public services. *See ADA Signing Statement* at 1070 (App. 1a); *Americans with Disabilities Act of 1989: Hearings on S. 933 Before the Senate Comm. on Labor and Human Resources and the Subcomm. on the Handicapped*, 101st Cong. 808-09, 815-17 (1989) (prepared statement of Hon. Richard L. Thornburgh, Attorney General of the United States) ("*Thornburgh Senate Statement*") (App. 16a-17a, 22a-23a); *Americans with Disabilities Act of 1990: Hearings on H.R. 2273 Before the House Comm. on the Judiciary and the Subcomm. on Civil and Constitutional Rights*, 101st Cong. 198-99, 206-07 (1989) (prepared statement of Attorney General Thornburgh) ("*Thornburgh House Statement*") (App. 27a, 32a-33a).

In 1986, I personally accepted, on behalf of President Reagan, a report from the National Council on Disability ("NCD") entitled "Toward Independence." NCD is a congressionally established Council. All 15 members of the Council at that time had been appointed by President Reagan. *See ADA Signing Statement* at 1070 (App. 1a).

The report recommended enactment of comprehensive legislation to ban discrimination against persons with disabilities. *See id.* Specifically, NCD found that historically society has tended to segregate and isolate

individuals with disabilities, and despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem.

NCD also found that discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services.

Further, NCD found that unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, or religion, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination. The NCD findings, among others, are incorporated in Section 2 of the ADA, 42 U.S.C. § 12101.

My decision to embrace the ADA was based on two key factors. First, the comprehensive character of the legislation was a significant factor. *See ADA Signing Statement* at 1070 (App 1a). Given the pervasive nature of discrimination faced by individuals with disabilities and the wide range of barriers faced by such individuals in such areas as employment and public services, it was critical that the legislation be comprehensive and cover both public and private entities. *See Thornburgh Senate Statement* (App. 16a *passim*); *Thornburgh House Statement* (App. 26a *passim*).

My Administration recognized that then-existing civil rights laws were inadequate. For example, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, only covered recipients of federal assistance. It did not cover services provided by public agencies that did not receive federal aid.

Thus, Section 504 left broad areas of disability discrimination untouched or inadequately addressed. Many persons with disabilities in this nation still lived in an intolerable state of isolation and dependence. In 1990,

despite the existence of laws such as Section 504 of the Rehabilitation Act, persons with disabilities were still too often shut out of the economic and social mainstream of American life. The unreasonable failure to eliminate attitudinal, architectural, and communication barriers in employment, transportation, public accommodations, public services and telecommunications denies persons with disabilities an equal opportunity to contribute to and benefit in a meaningful way from the richness of American society. *See ADA Signing Statement* at 1070 (App. 1a-2a); *Thornburgh Senate Statement* at 809 (App. 17a); *Thornburgh House Statement* at 198-99 (App. 26a-27a).

In the 20 years preceding the enactment of the ADA, civil rights legislation protecting disabled persons had been enacted in a piecemeal fashion. Thus, federal laws prior to the ADA were like a patchwork quilt in need of repair. There were holes in the fabric—serious gaps in coverage that left persons with disabilities without adequate civil rights protections. To be effective in addressing the pervasive discrimination by public agencies, among others, the ADA needed to be cohesive, coordinated, and comprehensive. *See Thornburgh Senate Statement* at 812 (App. 19a-20a); *Thornburgh House Statement* at 201 (App. 28a-29a).

Second, the ADA was modeled on existing federal civil rights laws prohibiting discrimination on the basis of disability. These laws, such as Section 504, have proven to provide the proper balance between the rights of persons with disabilities and the legitimate concerns of covered entities. The ADA also used as its model the panoply of civil rights laws prohibiting discrimination on the basis of race, color, national origin, religion, and sex. *See Thornburgh Senate Statement* at 810, 813-15, 818 (App. 17a-18a, 20a-22a, 24a-25a); *Thornburgh House Statement* at 201-03 (App. 29a-30a).

In conclusion, I recognize that no single piece of legislation can alone change longstanding perception or

misperceptions; regrettably, attitudes can only be reshaped gradually. One of the keys to this reshaping process, however, is to increase contact between and among people with disabilities and their nondisabled peers. And an essential component of that effort was the enactment of a comprehensive law that promotes the integration of people with disabilities into all aspects of American life, including our workplaces, our communities, and our schools and other public services. *See Thornburgh Senate Statement* at 819 (App. 25a); *Thornburgh House Statement* at 212 (App. 36a).

Respectfully submitted,

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APPENDICES

APPENDIX A

[2 Pub. Papers 1070 (July 26, 1990)]

[Page 1070]

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STATEMENT BY THE PRESIDENT ON SIGNING THE AMERICANS WITH DISABILITIES ACT OF 1990

July 26, 1990

Today, I am signing S. 933, the "Americans with Disabilities Act of 1990." In this extraordinary year, we have seen our own Declaration of Independence inspire the march of freedom throughout Eastern Europe. It is altogether fitting that the American people have once again given clear expression to our most basic ideals of freedom and equality. The Americans with Disabilities Act represents the full flowering of our democratic principles, and it gives me great pleasure to sign it into law today.

In 1986, on behalf of President Reagan, I personally accepted a report from the National Council on Disability entitled "Toward Independence." In that report, the National Council recommended the enactment of comprehensive legislation to ban discrimination against persons with disabilities. The Americans with Disabilities Act (ADA) is such legislation. It promises to open up all aspects of American life to individuals with disabilities — employment opportunities, government services, public accommodations, transportation, and telecommunications.

This legislation is comprehensive because the barriers faced by individuals with disabilities are wide-ranging. Existing laws and regulations under the Rehabilitation Act of 1973 have been effective with respect to the Federal

Government, its contractors, and the recipients of Federal funds. However, they have left broad areas of American life untouched or inadequately addressed. Many of our young people, who have benefited from the equal educational opportunity guaranteed under the Rehabilitation Act and the Education of the Handicapped Act, have found themselves on graduation day still shut out of the mainstream of American life. They have faced persistent discrimination in the workplace and barriers posed by inaccessible public transportation, public accommodations, and telecommunications.

Fears that the ADA is too vague or too costly and will lead to an explosion of litigation are misplaced. The Administration worked closely with the Congress to ensure that, wherever possible, existing language and standards from the Rehabilitation Act were incorporated into the ADA. The Rehabilitation Act standards are already familiar to large segments of the private sector that are either Federal contractors or recipients of Federal funds. Because the Rehabilitation Act was enacted 17 years ago, there is already an extensive body of law interpreting the requirements of that Act. Employers can turn to these interpretations for guidance on how to meet their obligations under the ADA.

The Administration and the Congress have carefully crafted the ADA to give the business community the flexibility to meet the requirements of the Act without incurring undue costs. Cost may be taken into account in determining how an employee is **[Page 1071]** "reasonably accommodated," whether the removal of a barrier is "readily achievable," or whether the provision of a particular auxiliary aid would result in an "undue burden." The ADA's most rigorous access requirements are reserved for new construction where the added costs of accessible features are minimal in relation to overall construction costs. An elevator exemption is provided for many buildings.

The careful balance struck between the rights of individuals with disabilities and the legitimate interests of business is shown in the various phase-in provisions in the ADA. For example, the employment provisions take effect 2 years from today for employers of 25 or more employees. Four years from today that coverage will be extended to employers with 15-24 employees. These phase-in periods and effective dates will permit adequate time for businesses to become acquainted with the ADA's requirements and to take the necessary steps to achieve compliance.

The ADA recognizes the necessity of educating the public about its rights and responsibilities under the Act. Under the ADA, the Attorney General will oversee Government-wide technical assistance activities. The Department of Justice will consult with the Architectural and Transportation Barriers Compliance Board, the Equal Employment Opportunity Commission, the Department of Transportation, the Federal Communications Commission, the National Council on Disability, and the President's Committee on Employment of People with Disabilities, among others, in the effort. We will involve trade associations, advocacy groups, and other similar organizations that have existing lines of communications with covered entities and persons with disabilities. The participation of these organizations is a key element in assuring the success of the technical assistance effort.

In signing this landmark bill, I pledge the full support of my Administration for the Americans with Disabilities Act. It is a great honor to preside over the implementation of the responsibilities conferred on the executive branch by this Act. I pledge that we will fulfill those responsibilities efficiently and vigorously.

The Americans with Disabilities Act presents us all with an historic opportunity. It signals the end to the unjustified segregation and exclusion of persons with disabilities from the mainstream of American life. As the Declaration of

Independence has been a beacon for people all over the world seeking freedom, it is my hope that the Americans with Disabilities Act will likewise come to be a model for the choices and opportunities of future generations around the world.

GEORGE BUSH

THE WHITE HOUSE,
July 26, 1990.

APPENDIX B

[2 Pub. Papers 1067 (July 26, 1990)]

[Page 1067]

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REMARKS ON SIGNING THE AMERICANS WITH DISABILITIES ACT OF1990

July 26, 1990

Evan, thank you so much. And welcome to every one of you, out there in this splendid scene of hope, spread across the South Lawn of the White House. I want to salute the Members of the United States Congress, the House and the Senate who are with us today – active participants in making this day come true. This is, indeed, an incredible day especially for the thousands of people across the Nation who have given so much of their time, their vision, and their courage to see this act become a reality.

You know, I started trying to put together a list of all the people who should be mentioned today. But when the list started looking a little longer than the Senate testimony for the bill, I decided I better give up, or that we'd never get out of here before sunset. So, even though so many deserve credit, I will single out but a tiny handful. And I take those who have guided me personally over the years:

Of course, my friends Evan Kemp and Justin Dart, up here on the platform with me; and of course I hope you'll forgive me for also saying a special word of thanks to two from the White House, but again, this is personal, so I don't want to offend those omitted. Two from the White House

Boyden Gray and Bill Roper, who labored long and hard. And I want to thank Sandy Parrino, of course, for her leadership. And I again — it is very risky with all these members of Congress here who worked so hard, but I can say on a very personal basis, Bob Dole has inspired me.

This is an immensely important day, a day that belongs to all of you. Everywhere I **[Page 1068]** look, I see people who have dedicated themselves to making sure that this day would come to pass: My friends from Congress, as I say, who worked so diligently with the best interest of all at heart, Democrats and Republicans, members of this administration – and I'm pleased to see so many top officials and members of my Cabinet here today who brought their caring and expertise to this fight; and then, the organizations – so many dedicated organizations for people with disabilities, who gave their time and their strength; and perhaps most of all, everyone out there and others – across the breadth of this nation are 43 million Americans with disabilities. You have made this happen. All of you have made this happen. To all of you, I just want to say your triumph is that your bill will now be law, and that this day belongs to you. On behalf of our nation, thank you very, very much.

Three weeks ago we celebrated our nation's Independence Day. Today we're here to rejoice in and celebrate another "independence day," one that is long overdue. With today's signing of the landmark Americans for Disabilities Act, every man, woman, and child with a disability can now pass through once-closed doors into bright new era of equality, independence, and freedom. As I look around at all these joyous faces, I remember clearly how many years of dedicated commitment have gone into making this historic new civil rights act a reality. It's been the work of a true coalition a strong and inspiring coalition of people who have shared both a dream and a passionate determination to make that dream come true. It's been a coalition in the finest spirit, a joining of Democrats and

Republicans, of the legislative and the executive branches, of Federal and State agencies, of public officials and private citizens, of people with disabilities and without.

This historic Act is the world's first comprehensive declaration of equality for people with disabilities, the first. Its passage has made the United States the international leader on this human rights issue. Already, leaders of several other countries, including Sweden, Japan, the Soviet Union, and all 12 members of the EEC, have announced that they hope to enact now similar legislation.

Our success with this Act proves that we are keeping faith with the spirit of our courageous forefathers who wrote in the Declaration of Independence: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights." These words have been our guide for more than two centuries as we've labored to form our more perfect union. But tragically, for too many Americans, the blessings of liberty have been limited or even denied. The Civil Rights Act of '64 took a bold step towards righting that wrong. But the stark fact remained that people with disabilities were still victims of segregation and discrimination, and this was intolerable. Today's legislation brings us closer to that day when no Americans will ever again be deprived of their basic guarantee of life, liberty, and the pursuit of happiness.

This Act is powerful in its simplicity. It will ensure that people with disabilities are given the basic guarantees for which they have worked so long and so hard: independence, freedom of choice, control of their lives, the opportunity to blend fully and equally into the rich mosaic of the American mainstream. Legally, it will provide our disabled community with a powerful expansion of protections and then basic civil rights. It will guarantee fair and just access to the fruits of American life which we all must be able to enjoy. And then, specifically, first the ADA ensures that employers covered by the act cannot discriminate against qualified individuals with

disabilities. Second, the ADA ensures access to public accommodations such as restaurants, hotels, shopping centers, and offices. And third, the ADA ensures expanded access to transportation services. And fourth, the ADA ensures equivalent telephone services for people with speech or hearing impediments.

These provisions mean so much to so many. To one brave girl in particular, they will mean the world. Lisa Carl, a young Washington State woman with cerebral palsy, who I'm told is with us today, now **[Page 1069]** will always be admitted to her hometown theater. Lisa, you might not have been welcome at your theater, but I'll tell you — welcome to the White House. We're glad you're here. The ADA is a dramatic renewal not only for those with disabilities but for all of us, because along with the precious privilege of being an American comes a sacred duty — to ensure that every other American's rights are also guaranteed.

Together, we must remove the physical barriers we have created and the social barriers that we have accepted. For ours will never be a truly prosperous nation until all within it prosper. For inspiration, we need look no further than our own neighbors. With us in that wonderful crowd out there are people representing 18 of the daily Points of Light that I've named for their extraordinary involvement with the disabled community. We applaud you and your shining example. Thank you for your leadership for all that are here today.

Now, let me just tell you a wonderful story, a story about children already working in the spirit of the ADA, a story that really touched me. Across the Nation, some 10,000 youngsters with disabilities are part of Little League's Challenger Division. Their teams play just like others, but — and this is the most remarkable part — as they play, at their sides are volunteer buddies from conventional Little League teams. All of these players work together. They team up to wheel around the bases and to field grounders together and,

most of all, just to play and become friends. We must let these children be our guides and inspiration.

I also want to say a special word to our friends in the business community. You have in your hands the key to the success of this Act, for you can unlock a splendid resource of untapped human potential that, when freed, will enrich us all. I know there have been concerns that the ADA may be vague or costly, or may lead endlessly to litigation. But I want to reassure you right now that my administration and the United States Congress have carefully crafted this Act. We've all been determined to ensure that it gives flexibility, particularly in terms of the timetable of implementation, and we've been committed to containing the costs that may be incurred.

This Act does something important for American business, though and remember this: You've called for new sources of workers. Well, many of our fellow citizens with disabilities are unemployed. They want to work, and they can work, and this is a tremendous pool of people. And remember this is a tremendous pool of people who will bring to jobs diversity, loyalty, proven low turnover rate, and only one request: the chance to prove themselves. And when you add together Federal, State, local, and private funds, it costs almost $200 billion annually to support Americans with disabilities – in effect, to keep them dependent. Well, when given the opportunity to be independent, they will move proudly into the economic mainstream of American life, and that's what this legislation is all about.

Our problems are large, but our unified heart is larger. Our challenges are great, but our will is greater. And in our America, the most generous, optimistic nation on the face of the earth, we must not and will not rest until every man and woman with a dream has the means to achieve it.

And today, America welcomes into the mainstream of life all of our fellow citizens with disabilities. We embrace

you for your abilities and for your disabilities, for our similarities and indeed for our differences, for your past courage and your future dreams. Last year, we celebrated a victory of international freedom. Even the strongest person couldn't scale the Berlin Wall to gain the elusive promise of independence that lay just beyond. And so, together we rejoiced when that barrier fell.

And now I sign legislation which takes a sledgehammer to another wall, one which has for too many generations separated Americans with disabilities from the freedom they could glimpse, but not grasp. Once again, we rejoice as this barrier falls for claiming together we will not accept, we will not excuse, we will not tolerate discrimination in America.

With, again, great thanks to the Members of the United States Senate, leaders of whom are here today, and those who worked so tirelessly for this legislation on both sides of the aisles. And to those Members of the House of Representatives with **[Page 1070]** us here today, Democrats and Republicans as well, I salute you. And on your behalf, as well as the behalf of this entire country, I now lift my pen to sign this Americans with Disabilities Act and say: Let the shameful wall of exclusion finally come tumbling down. God bless you all.

APPENDIX C

[2 Pub. Papers 963 (July 26, 1991)]

[Page 963]

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REMARKS COMMEMORATING THE FIRST ANNIVERSARY OF THE SIGNING OF THE AMERICANS WITH DISABILITIES ACT OF 1990

July 26, 1991

First, may I greet the distinguished members of Congress here in the front rows, thank them for coming, thank them for their interest in the passage of this important legislation we're here to celebrate today, but also in their interest in following up on it. May I greet, also, the Attorney General Dick Thornburgh, and our Secretary of HHS Lou Sullivan and the Vice President, of course. He and I welcome you to the Rose Garden. And may I salute the other guests that are with us. And a special thanks today to the men and women from our business community. American corporations, you see, are a vital part of this team, and your support of the ADA is critical to its success.

One year ago, I stood over there — many of you present — on the South Lawn. And I will never, literally, never forget that sight or certainly the emotional feeling I felt on that day. Thousands of people from across the country had come to celebrate the signing of the Americans with Disabilities Act, one of the most comprehensive civil rights bills in the history of this country. And while people felt a justifiable sense of triumph last year, you also could see a feeling of eager impatience. After all, the signing of the

ADA didn't mark the end of a long struggle, it marked, really, a beginning.

Some of you here today joined me on the South Lawn, as I mentioned, a year ago, and we've made tremendous advances since that ceremony. We've introduced changes that will transform people's worlds. The ADA has also helped us, all of us, to understand a little bit more about ourselves. It reminds us that along with the privilege of being an American comes a duty to recognize and defend the rights of every American.

This bill does more than make the American dream of equality a reality for 43 million Americans with disabilities. It offers, in a sense, fresh testimony to our Nation's greatness. It demonstrates how we can advance the cause of civil rights. It shows what can happen when we work together, drawing upon the fundamental decency of the American people.

The quest for civil rights is not a zero-sum game. It shouldn't mean advancing some at the expense of others. The quest **[Page 964]** for civil rights is a quest for individual rights and equal opportunity and it's a crusade to throw open the doors of opportunity and tear down the walls of bigotry.

The ADA works because it calls upon the best in the American people, and then Americans respond. It works because it embodies what must be at the heart of all civil rights struggles: the spirit of inclusiveness, the devotion to individual rights and equal opportunity. That devotion runs deep in our Nation. We are the land of opportunity and always have been.

Our Constitution and our courts pledge equal protection under the law. But equally important, our people believe in legal equality. And many try to broaden opportunity in little ways, by reaching out to capable people and giving them a chance, giving them a fair chance.

America must be a country where the sons and daughters of poverty have the same grasp on the American dream as the children of privilege. And it must be a land where a child can overcome any obstacle and fulfill his or her own potential.

We see this promise fulfilled by a man I presented to this nation 4 weeks ago. And we can be proud to live in a country whose highest Court will include a man who understands the importance of basic American values: tolerance, industry, and decency. And I'm speaking, of course, of my nominee to the Court, Clarence Thomas.

While Judge Thomas was at the EEOC, he compiled an excellent record on disability issues, with which I hope all of you are familiar. But his life illustrates the principle that inspires all civil rights bills, the principle that we must throw open the doors of opportunity to everyone. And this spirit should guide us as we pursue all civil rights legislation, for our greatest strength lies in our ability to work together and honor the shared values we treasure.

We have worked together this last year. And in so doing, we've understood more fully just how much people with disabilities have to offer. We've demonstrated that social progress includes economic growth and that both play essential roles in the in the American dream. Businesses support the ADA because it gives everyone a chance to be productive in the workplace. It broadens our economic mainstream. It enables society to benefit from the wisdom, energy and industry of people who want just one thing, a fair chance.

And while we've made a strong start, we have much to do. As long as the doors of opportunity are closed to even one American, we must keep working at it.

The passage of the ADA, the world's first declaration of equality for people with disabilities, made this country the international leader on this human rights issue. And now the

world is watching to see how we use this act, how we remove the physical barriers we've created and the social barriers that we've accepted. Our success or failure in keeping the promise of the ADA will affect the lives of hundreds of millions of people with disabilities, not just here in the United States but throughout the world.

Our challenges remain great, but our will is even greater. In America – the most generous, optimistic nation on the face of the earth – we will not rest until every man and woman and child with a dream has a fair chance to realize it.

Most of this work will be done by individual Americans acting day by day to increase tolerance and understanding. But the ADA also required Five Federal Agencies to come up implementation regulation or guidelines. These regulations relating to employment, public accommodation, transportation, and communications are key to the full implementation of ADA.

And so I'm proud to announce that most of these Federal regs will be issued today.

All guidelines required of the Department of Justice, the EEOC, the FCC are in final form, and those regarding transportation will be issued soon. I want to thank the people of the Executive Branch who have worked so hard to make the ADA a reality.

And in addition, today I'm issuing a memorandum to Federal Departments and Agencies. And it directs them to recruit people with disabilities as Federal employees and to ensure that Americans with disabilities have access to Federal programs. The Federal Government must serve as a model employer for the rest of the Nation.

And again, thank you all so very much for your work, for your dedication, and for your devotion and your steadfast faith, and to **[Page 965]** many here, for your inspiring

example. And may God bless you all. And thank you very, very much.

APPENDIX D

[*Americans with Disabilities Act of 1989: Hearings on S. 933 Before the Senate Comm. on Labor and Human Resources and the Subcomm. on the Handicapped*, 101st Cong. (1989)]

[Page 808]

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PREPARED STATEMENT OF RICHARD THORNBURGH

Mr. Chairman, distinguished members of the Committee, it is a great pleasure for me to be able to present to you the Administration's views on the proposed Americans With Disabilities Act. Twenty-five years ago to this day, Congress and the President were putting the finishing touches on the Civil Rights Act of 1964, the most important civil rights legislation ever passed. It is exciting for me to be a part of the process which, this year, will pass legislation that will extend the Nation's civil rights guarantees to the disability community. Persons with disabilities have already made enormous contributions to American society, and can and will contribute even more as legislation goes forward in this Congress to improve their even greater entry into the mainstream.

It is estimated that there are over 36 million Americans with disabilities. President Bush has consistently supported efforts to bring these Americans into the 'mainstream' of American society. As Vice President, he stated that we must develop programs and policies that promote independence, freedom of choice, and productive involvement in the social and economic mainstream. This means access to education, jobs, public accommodations, and public transportation — in

other words, full participation in and access to all aspects of society. This year, in his remarks to the Joint Session of Congress, the President reiterated this commitment. We at the Department of Justice wholeheartedly share these goals and commit ourselves, along with the President and the rest of the Administration, to a bipartisan effort to enact comprehensive legislation attacking **[Page 809]** discrimination in employment, public services, transportation, public accommodations, and telecommunications.

Despite the best efforts of all levels of government and the private sector and the tireless efforts of concerned citizens and advocates everywhere, many persons with disabilities in this Nation still lead their lives in an intolerable state of isolation and dependence. Fifteen years have gone by since the Rehabilitation Act was passed. In that time the doors of educational opportunity have been opened to persons with disabilities. Nevertheless, persons with disabilities are still too often shut out of the economic and social mainstream of American life. The unreasonable and, in most cases, unthinking failure to eliminate attitudinal, architectural, and communications barriers in employment, transportation, public accommodations, and telecommunications denies persons with disabilities an equal opportunity to contribute to and benefit from the richness of American society. The continued maintenance of these barriers impose staggering economic and social costs and inhibits our sincere and substantial Federal commitment to the education, rehabilitation, and employment of persons with disabilities. The elimination of these barriers will enable society to benefit from the skills and talents of persons with disabilities and will enable persons with disabilities to lead more productive lives.

Efforts to develop comprehensive legislation to ensure equal opportunity for disabled persons should, of course, also be **[Page 810]** mindful of other principles as well. First, any

new legislation should take into consideration the existing fabric of Federal laws prohibiting discrimination on the basis of handicap. During the past two decades, Congress has enacted a series of statutes focusing on a wide range of problems and providing an intricate web of enforcement procedures. The courts and Federal agencies have also been active in interpreting these laws, defining the meaning of nondiscrimination in the context of disability. Any new legislation should be coordinated with this body of law in order to avoid inadvertent conflicts, confusion, the inefficient use of enforcement resources, and unnecessary litigation.

New legislation prohibiting discrimination on the basis of disability should use as its model the panoply of civil right laws prohibiting discrimination on the basis of race, color, national origin, and sex. We must end the anomaly of widely protecting women and minorities from discrimination while failing to provide parallel protection for people with disabilities.

New legislation should also be designed to keep the development of intrusive Federal regulation to a minimum. It is the Administration's goal to regulate the private sector only in those situations where it is necessary and only to the extent called for by the problem at hand. Concerns for the economic efficiency of America's businesses, especially its small entrepreneurs, and for competitiveness in the world economy must be given due weight. Legislation which unduly burdens American businessmen and women is ultimately in no one's interest. **[Page 811]** Federal action in this area should likewise recognize that States can act (and most have already acted) to protect the rights of persons with disabilities in ways tailored to each State's particular circumstances.

Finally, the issue of costs, both the fiscal cost of lost income tax revenues and increased transfer payments when disabled persons are not accommodated and the cost of accommodating persons with disabilities, must be

considered. Careful consideration must be given to whether the line on costs has been drawn in the proper place, and we will need to work together in the weeks ahead on this.

The cost issue is made more difficult because it is virtually impossible to put a price tag on the accommodations required by any bill in this area. For example, while widening an existing doorway will cost $300 to $600, no one can estimate with any degree of reliability how many doorways will need to be widened. Making accurate cost predictions is also hampered by ambiguity in the standards enunciated in S. 933.

Similarly, we must recognize that passing comprehensive civil rights legislation protecting persons with disabilities will have direct and tangible benefits for our country. As with the area of costs, we have found it difficult to quantify the exact economic benefits of legislation in fiscal terms. Certainly, the elimination of employment discrimination and the mainstreaming of persons with disabilities will result in more persons with disabilities working, in increased earnings, in less **[Page 812]** dependence on the Social Security system for financial support, in increased spending on consumer goods, and increased tax revenues.

With these principles as a guide, I would like to address the "Americans with Disabilities Act of 1989." This Committee is to be commended for its efforts in drafting S. 933. One of its most impressive strengths is its comprehensive character. Over the last 20 years, civil rights laws protecting disabled persons have been enacted in piecemeal fashion. Thus, existing Federal laws are like a patchwork quilt in need of repair. There are holes in the fabric, serious gaps in coverage that leave persons with disabilities without adequate civil rights protections. In some areas, there are overlapping pieces of fabric, duplication that has resulted in confusion and counterproductive enforcement efforts. The Administration supports the legislative effort to

enact a bill that is at one time cohesive, coordinated, and comprehensive.

I am pleased that S. 933 includes provisions pertaining to job discrimination. Perhaps the most glaring omission in the landscape of disability rights laws is that there is nothing in the Federal law that prohibits discrimination in employment in the private sector against those with disabilities. While persons who work for the Federal Government, who work in federally assisted programs, or who work for certain Federal contractors are protected from discrimination on the basis of handicap, most other workers are not. Each year in this country, **[Page 813]** over 150,000 young men and women with disabilities complete their education under the Education of the Handicapped Act, some receiving high school diplomas, some receiving certificates of completion. This education law has been one of our modern success stories in the disability area. But if our investment in the education of these students is to bear fruit, we must ensure that they face an employment arena similarly free of discrimination on the basis of handicap.

President Bush endorses your concept of paralleling in the disability area Title VII of the Civil Rights Act of 1964, the landmark statute that prohibits discrimination on the basis of race, color, national origin, sex and religion. Furthermore, it is the Administration's view that such legislation should use the standard provided by section 504 of the Rehabilitation Act of 1973 — the concept that nondiscrimination includes the requirement that an employer make reasonable accommodation to the known mental or physical impairments of qualified disabled persons as long as making the accommodation would not result in an undue hardship on the operations of the employer.

Such a law would be a major step forward for persons with disabilities. We must be mindful, however, of the cost burdens that this law more than other civil rights laws will place on businesses. It is our goal here to seek a balance: to

bring persons with disabilities into the mainstream of American economic life and reduce the cost to society of exclusion while, at the same time, keeping the American economic system strong and **[Page 814]** viable. We are concerned with the impact of S. 933 on small businesses. Because small businesses have limited financial resources, they do not have the advantage of spreading the costs of accommodations over a large payroll. Further, their small workforce gives them limited flexibility in restructuring jobs, a frequently used method of making reasonable accommodations. For these reasons, the Administration would like to join the dialogue with this Committee on the appropriate extent of coverage for smaller employers.

Of course, any legislation must be consistent with Federal drug-free workplace initiatives. I need not remind this Committee of the scourge of illegal drug use in this country and its frightening impact on daily American life. We believe that this bill should make clear that substance abusers should not be included within the protections of this civil rights statute. The bill should also be fully consistent with this Administration's commitment to the eradication of substance abuse in the workplace and elsewhere.

The inclusion of public accommodations in the "Americans with Disabilities Act" is a Federal recognition of their importance in American life. Just as Title II of the Civil Rights Act of 1964 opened up restaurants and theaters to Black Americans, S. 933 promises to persons with disabilities the ability to enjoy full participation in our American way of life. The Administration endorses the prohibition of discrimination on the basis of disability in public accommodations. Recent studies **[Page 815]** show that persons with disabilities are too often discouraged from attending concerts, going to restaurants, and attending movies. We recognize that requiring public accommodations to make themselves accessible to persons with mobility impairments and to provide auxiliary aide to those with

visual and hearing impairments could result in significant costs. We would like to work with this Committee to develop provisions that will ameliorate the cost burden. Similarly, we need to work together to define the parameters of coverage in this area. We think that modifications to S. 933 should address our concerns regarding the scope of public accommodations.

We also seek a bill in this area that will provide clear guidance so that unnecessary and costly litigation can be avoided. Great care then should be taken in crafting a standard for what constitutes discrimination. It may be preferable to use terms and concepts from section 504, a law that now has a 16-year history, rather than developing new terms and standards. Finally, any new legislative initiative should avoid potential confrontation with the First Amendment to the Constitution that might arise with the coverage of religious institutions.

The provision of accessible transportation for persons with disabilities has been one of the most complex issues faced by Congress and the Executive Branch. Four statutes[1] and a series **[Page 816]** of current DOT regulations present an interrelated, complicated set of obligations. Several Federal circuit courts have interpreted these statutes and rules. The President agrees with this Committee that additional legislation is needed to set the record straight. We must be careful, however, that our efforts clarify the picture, rather than adding to the confusion.

Our goal, and yours, is to ensure that persons with disabilities have access to adequate transportation in this

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[1] Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; section 16(a) of the Urban Mass Transportation Act of 1964, as amended, 49 U. S. C. § 1612 (a); section 165 (b) of the Federal-Aid Highway Act of 1973, as amended, 23 U.S.C. § 142, note; and section 317(c) of the Surface Transportation Assistance Act of 1982, 49 U.S.C. § 1612(d).

country, and we support legislation that would focus our efforts on publicly funded transportation services. We recommend enactment of a bill that would, for the first time, guarantee that public bus systems in this country be accessible to persons with mobility impairments. Thus, legislation should require that all new public buses be accessible to persons with disabilities. The Secretary of Transportation should have the flexibility to relax this requirement for any municipality where accessible bus service would prove to be impractical. For instance, in localities with extremely inclement climates where wheelchair lifts do not function for much of the year, it may be more practical to provide accessible paratransit service. Because the average life of a bus is 12 years, accessible bus transportation would become a reality in this country in a relatively short period of time, except for the cases where accessible buses are ineffective. As with other sections of S. 933 that involve state **[Page 817]** and local government services, my experience as a Governor teaches me that it will be important to get input from the affected officials and people with disabilities from around the country before finalizing these provisions.

In addition, legislation should also require paratransit services that supplement, rather than duplicate, the fixed-route bus service. Ideally, paratransit service should be aimed at those severely disabled persons who are unable to use mainline accessible transportation.

Again, we should recognize the cost implications of these requirements. In the public transportation area, a considerable percentage of the capital costs of public transit authorities is borne by the Federal Government. It is unlikely, given existing fiscal constraints, that any substantial amount of new monies will be available in the Federal budget for transportation. Thus, these increased costs for accessibility must be carried out with already planned outlays. Given these fiscal constraints, we think some

reasonable limitation on paratransit service costs may be appropriate and we are prepared to discuss with the Committee the level for such a limit.

On another matter, the Administration agrees that a comprehensive bill should address the issue of making our Nation's telecommunications system accessible to deaf persons. The inability to communicate by telephone renders the routine tasks of daily living — such as making a doctor's appointment or inquiring about a job opportunity — difficult or even impossible **[Page 818]** to accomplish. Establishment of a telecommunications relay service is clearly a vital step toward full integration of deaf persons into the mainstream. Legislation addressing this issue, though, should take into account the ongoing Federal Communications Commission inquiry mandated by the Telecommunications Accessibility Enhancement Act,[2] and preserve the maximum degree of freedom for the FCC to use its expertise in determining which specific requirements will result in the most efficient and cost-effective system.

Because S. 933 uses existing civil rights laws for minorities and women as its model, the remedies under this bill should parallel these existing laws. For example, the enforcement procedures and remedies now available under title VII of the Civil Rights Act of 1964 should be used for violations of discrimination based on disability in the employment area; and Title II's enforcement scheme should be available to redress discrimination based on disability in places of public accommodation. This approach is fair and easy to-implement. It would provide persons with disabilities with a full array of remedies, including preventive relief and reimbursement for out-of-pocket expenses, including backpay. In addition, use of enforcement mechanisms already in existence should ease enforcement and eliminate

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2 Pub. L. No. 100-542, 102 Stat. 2721 (1988).

inconsistencies and confusion among those who have to comply with the law.

[Page 819] I have witnessed the many faces of discrimination confronting persons with disabilities. As noted, over 36 million people in this country are disabled by reason of some physical or mental handicapping condition. The mere existence of these handicapping conditions does not for many of these individuals prevent then from interacting freely with others in society, or from performing the tasks that others perform on a daily basis. But persons with disabilities are all too often not allowed to participate because of stereotypical notions held by other in society — notions that have, in large measure, been created by ignorance and maintained by fear.

It is precisely these sorts of antiquated attitudes that have blocked people with disabilities from entering the mainstream of American life. Certainly attitudinal changes cannot be simply commanded or even legislated out of existence. No particular court order or single piece of legislation can alone change longstanding perception or misperceptions; regrettably, attitudes can only be reshaped gradually. One of the keys to this reshaping process is to increase contact between and among people with disabilities and their able-bodied peers. And an essential component of that effort is the development of a comprehensive set of laws supported by a helpful set of regulations that all work together to promote the integration of people with disabilities into our communities, schools, and workplaces.

APPENDIX E

[*Americans with Disabilities Act of 1990: Hearings on H.R. 2273 Before the House Comm. on the Judiciary and the Subcomm. on Civil and Constitutional Rights*, 101st Cong. 198-99, 206-07 (1989)]

[Page 198]

PREPARED STATEMENT OF DICK THORNBURGH, ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA

Mr. Chairman, distinguished members of the Committee, it is a great pleasure for me to be able to present to you the Administration's views on the proposed Americans with Disabilities Act. It is exciting to be a part of a process which, this year, will see the passage of legislation that will extend the Nation's civil rights guarantees to Americans with disabilities. Persons with disabilities have already made enormous contributions to American society, and can and will contribute even more as legislation goes forward in this Congress to increase their access into the social and economic mainstream of American life. We want America to be an opportunity society for all Americans, and that requires taking actions to make opportunities available to Americans with disabilities.

Despite the best efforts of all levels of government and the private sector and the tireless efforts of concerned citizens and advocates everywhere, many persons with disabilities in this Nation still lead their lives in an intolerable state of isolation and dependence. Over fifteen years have gone by since the Rehabilitation Act of 1973 conferred on Federal and federally assisted programs the responsibility to accommodate Americans with disabilities. In that time, the doors of opportunity have been opened to persons with disabilities. Nevertheless, persons with disabilities are still

too often shut out of the economic and social mainstream of American life. The unreasonable and, in most cases, unthinking failure to eliminate attitudinal, architectural, and communications barriers in employment, transportation, public accommodations, public services, and **[Page 199]** telecommunications denies persons with disabilities an equal opportunity to contribute to and benefit from the richness of American society. The continued maintenance of these barriers imposes staggering economic and social costs and inhibits our sincere and substantial Federal commitment to the education, rehabilitation, and employment of persons with disabilities. The elimination of these barriers will enable society to benefit from the skills and talents of persons with disabilities and will enable persons with disabilities to lead more productive lives.

On June 22, 1989, I testified on the Americans with Disabilities Act before the Senate Committee on Labor and Human Resources. At that time, the Administration endorsed the concept of comprehensive legislation in the disability rights area and viewed S. 933, the Senate analogue to H.R. 2273, as the appropriate vehicle for such landmark legislation. My testimony did, however, raise areas of concern that needed to be addressed before the Administration could specifically endorse the Americans with Disabilities Act. During this past summer, representatives of the Administration engaged in prolonged negotiations with the Senate on this bill. These discussions led to revisions in S. 933 and eventually to the bill that passed the Senate on September 7, 1989, with broad bipartisan support.

I am therefore pleased to reiterate the Administration's support of the Americans with Disabilities Act. This bill is **[Page 200]** fair, balanced legislation. It will ensure that persons with disabilities in this country enjoy access to the mainstream of American life. It builds on an extensive body of statutes, case law, and regulations to avoid unnecessary

confusion; it allows maximum flexibility for compliance; and it does not place undue burdens on Americans who must comply. The Administration asks that you consider the Americans with Disabilities Act expeditiously and the Administration hopes that the bill will be signed into law before the end of this year.

President Bush has consistently supported efforts to bring persons with disabilities into the mainstream of American society. As Vice President, he stated that we must develop programs and policies that promote independence, freedom of choice, and productive involvement in our social and economic mainstream. This means access to education, jobs, public accommodations, public services, and public transportation — in other words, full participation in and access to all aspects of society. This year, in his remarks to the Joint Session of Congress, the President reiterated this commitment.

We believe that S. 933, successfully incorporates the President's goals. It provides an effective means of combating discrimination and yet gives latitude to employers, public accommodations, and other entities covered by the bill to allow **[Page 201]** them the flexibility to achieve compliance without placing an undue burden on their operations.

The comprehensive scope of the Americans with Disabilities Act will fill serious gaps in the patchwork quilt of existing Federal laws protecting disabled persons. Perhaps the most glaring gap in the fabric of existing disability rights laws is that there is little in the Federal law that prohibits discrimination in employment in the private sector against those with disabilities. While persons who work for the Federal Government, who work in federally assisted programs, or who work for certain Federal contractors are protected from discrimination on the basis of handicap, most other workers are not. Each year in this country, over 150,000 young men and women with disabilities complete

their education under the Education of the Handicapped Act, some receiving high school diplomas, some receiving certificates of completion. This education law has been one of our modern success stories in the disability area. But if our investment in the education of these students is to bear fruit, we must ensure that they face a labor market similarly free of discrimination on the basis of handicap.

The Americans with Disabilities Act wisely parallels in the disability area title VII of the Civil Rights Act of 1964, the landmark statute that prohibits discrimination in employment on the basis of race, color, national origin, sex, or religion. The **[Page 202]** Americans with Disabilities Act, as passed by the Senate, appropriately phases in its coverage. When they go into effect two years after enactment, the employment provisions will cover only those employers with 25 or more employees. Two years later, coverage will be extended to include all employers with 15 or more employees. Under this phase-in approach, the more immediate burdens of compliance will fall on those larger businesses most able to bear them. We also believe that the two-year implementation period will ease any initial confusion regarding compliance requirements by giving the Administration adequate time to craft regulations and engage in wide-reaching technical assistance efforts.

Furthermore, the Administration is pleased that the employment provisions of the Americans with Disabilities Act closely follow the standards provided by section 504 of the Rehabilitation Act of 1973 — including the concept that nondiscrimination includes the requirement that an employer make reasonable accommodation to the known mental or physical impairments of qualified disabled persons as long as making the accommodation would not result in an undue hardship on the operations of the employer. The fact that many of the employment provisions of the Americans with Disabilities Act are drawn directly and, in many instances, even taken verbatim from the Federal regulations

implementing section 504 represents a particularly wise choice. The section 504 standards are familiar **[Page 203]** to large segments of the private sector already covered by the Rehabilitation Act. Experience has shown that these standards do not result in undue costs or excessive litigation.

The Administration is satisfied that the Senate-passed Americans with Disabilities Act is consistent with Federal drug-free workplace initiatives. I need not remind this Committee of the scourge of illegal drug use in this country and its frightening impact on daily American life. Under the Senate bill individuals who are illegally using drugs are not included within the protections of the bill and the legality of drug testing is not affected. The bill is fully consistent with this Administration's commitment to the eradication of substance abuse in the workplace and elsewhere.

The inclusion of public accommodations in the "Americans with Disabilities Act" is a Federal recognition that an opportunity society provides access to the mainstream of everyday life. Just as title II of the Civil Rights Act of 1964 opened up hotels, restaurants, and theaters to Black Americans, the Americans with Disabilities Act promises to persons with disabilities the right to enjoy full participation in our American way of life. The Administration endorses the prohibition of discrimination on the basis of disability in public accommodations and its extension to a wide range of entities. Persons with disabilities should not be discouraged **[Page 204]** from attending concerts, going to restaurants, and attending movies. And they should not have to face insurmountable obstacles in accomplishing such vital tasks of daily life as grocery shopping or visiting a pharmacy or doctor's office, or going to the dry cleaners.

We recognize that imposing an unlimited requirement that public accommodations make themselves accessible to persons with mobility impairments and provide auxiliary aids to those with visual and hearing impairments could result in significant costs. However, the ADA, as passed by the

Senate, provides a series of limitations on compliance requirements. For example, physical barriers need only be removed when the removal is "readily achievable" and auxiliary aids must be provided only if they will not result in an undue burden. Under the Americans with Disabilities Act, for example, a restaurant would not be required to provide menus in braille for blind patrons, if the waiters in the restaurant were willing to read the menu. The Act also has minimal requirements for retrofitting existing facilities. In fact, the Act's "readily achievable" standard requires that existing architectural barriers be removed when doing so is easily accomplishable or able to be carried out without much difficulty or expense.

As an essentially forward-looking bill, the legislation reserves the most rigorous accessibility requirements for new **[Page 205]** construction, resulting in an estimated increase of construction costs of no more than one percent. Even this now construction requirement has certain limitations that attempt to mitigate costs. The Americans with Disabilities Act contains an exception for placing elevators in new or altered buildings, perhaps the most costly capital expense for making buildings accessible. Any building that has less than 3,000 square feet per story or that is less than three stories in height need not be constructed with an elevator. The Administration believes a more prudent course would make the requirement apply to new construction of buildings with more than 3 stories. Only multistory shopping malls, professional offices of health care providers, and other categories of buildings designated by the Attorney General would be required to have elevators.

The Administration also supports the Senate bill's exclusion of religious organizations and entities controlled by religious organizations from the reach of the public accommodations provisions. Places of worship and the activities of entities controlled by religious organizations have been prudently excluded from the bill.

The Administration is well aware of the costs that litigation designed to test novel theories can impose an business in this country. In order to avoid unnecessary and costly litigation, the Americans with Disabilities Act, in most cases, **[Page 206]** Congress and the Executive Branch. Four statutes[1] and a series of current Department of Transportation regulations present an interrelated, complicated set of obligations. Several Federal circuit courts have interpreted these statutes and rules. The President agrees that additional legislation is needed to bring certainty to this area and believes that the Americans with Disabilities Act appropriately clarifies transit requirements.

Our goal, and yours, is to ensure that persons with disabilities have access to adequate transportation in this country. The Americans with Disabilities Act would, for the first time, guarantee that public bus systems in this country are accessible to persons with mobility impairments by requiring that all new public buses be accessible to persons with disabilities with the Department of Transportation empowered to grant waivers in the narrow circumstances where such buses are unavailable. No retrofitting of existing buses is required by the bill. Requiring that all new buses be accessible is a major change in Federal transportation policy and a welcome one. The unavailability of accessible public transportation in areas served by public transit continues to be a major barrier to the employment of persons with disabilities and a significant factor **[Page 207]** in continuing their isolation from everyday American life. The Administration views this provision of the Americans with Disabilities Act as a key component of the bill.

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[1] Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; section 16(a) of the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. § 1612(a), section 165(b) of the Federal-Aid Highway Act of 1973, as amended, 23 U.S.C. § 142 note; and section 317(c) of the Surface Transportation Assistance Act of 1982, 49 U.S.C.§ 1612(d).

Approximately 35% of the buses used in urban mass transit in this country are already accessible. Because the average life of a bus is 12 years, accessible bus transportation would become a reality in this country in a relatively short period of time.

In addition, the Administration is pleased that the Americans with Disabilities Act requires the provision of supplementary paratransit services. Approximately 75% of all transit agencies already provide paratransit services. The Americans with Disabilities Act would permit paratransit services that supplement, rather than duplicate, the fixed route bus service. Further, under the Americans with Disabilities Act, paratransit services need only be provided to those disabled persons who are unable to use mainline accessible transportation. Thus, those persons whose physical or mental disability is so severe that they are unable to use the accessible mainline bus system will be eligible to gain access to their community through paratransit services.

Again, the Americans with Disabilities Act wisely recognizes the cost implications of paratransit service. If providing paratransit services at a level that is comparable to the **[Page 208]** accessible fixed route system is so costly that it results in undue financial burden on the local transit authority, the local government can provide a reduced level of services. The Secretary of Transportation will issue regulations on what constitutes an undue financial burden and, in doing so, can use a "flexible numerical formula" that incorporates appropriate local characteristics. In this era of fiscal constraints, the paratransit provisions of the Americans with Disabilities Act strike a responsible balance between providing accessible transportation and protecting the economic viability of local transit providers.

During negotiations between the Senate and the Administration, the exact nature of the accessibility requirements for intercity bus services by private entities proved to be a thorny issue. The Administration believes that

the in depth three year study to be done by the Office of Technology Assessment will provide valuable information on cost effective ways to provide accessible intercity bus transportation and can provide a basis for further legislation in this difficult area. Because there is substantial evidence of the financial fragility of private intercity bus operators, the Administration expects that the study will provide detailed analyses and recommendations on a wide range of accessibility strategies and their relationship to the provision of bus service, particularly in rural areas. We think that delaying the implementation of the **[Page 209]** rather than attempting to develop new terms and standards, incorporates terms and concepts from section 504, a law that now has a 16-year history.

We are pleased that the Americans with Disabilities Act, as passed by the Senate, does not create additional monetary incentives for private litigation. Earlier versions of the bill would have unduly encouraged private suits by offering the prospect of jury trials, large monetary awards, and punitive damages. Under the Senate bill, the remedies available in suits by private litigants against public accommodations are limited to injunctive relief, attorneys fees, and court costs. Authority to seek monetary damages and civil penalties is given only to the Attorney General and, even then, only in pattern or practice cases or suits of general public importance. The Department of Justice intends to limit its requests for monetary damages to compensation for out-of-pocket losses and would not include speculative damages or damages for pain and suffering. In fact, it is only in the employment area that any monetary relief is available to private litigants, and that particular relief, in the form of back pay, has boon available under other civil rights employment statutes for the last 25 years.

The provision of accessible transportation for persons with disabilities has been one of the most complex issues faced by **[Page 210]** Americans with Disabilities Act's

requirement that new intercity buses be accessible until 7 years from the date of enactment for small providers (6 years for other bus service providers) is necessary. The three-year period between the completion of the OTA study and the effective date of the Americans with Disabilities Act's requirements will give more than ample time for the Department of Transportation and the Congress to make appropriate regulatory and statutory changes based on the study. Maintaining the Act's accessible bus requirement during this interim period will act as a spur to the development of technological advances in this area.

On another matter, the Administration strongly supports the Americans with Disabilities Act requirements mandating that our Nation's telecommunications system be made accessible to deaf persons. The inability to communicate by telephone renders the routine tasks of daily living — such as making a doctor's appointment or inquiring about a job opportunity — difficult or even impossible to accomplish. Establishment of a telecommunications relay service is clearly a vital stop toward full integration of deaf persons into the mainstream.

The Administration particularly endorses the technical assistance provisions in the Americans with Disabilities Act that were added to the bill in an amendment sponsored by Senator Dole. It is our belief that the entities covered by this landmark bill **[Page 211]** — employers, public and private transit agencies, State and local governments, telephone companies, and public accommodations — will comply with the law voluntarily. We therefore expect that Federal efforts to provide information on the law's requirements and on how to comply in a cost-effective manner will be well-received and reduce the total cost to society of complying.

We at the Department of Justice wholeheartedly share the goals of the Americans with Disabilities Act and commit ourselves to an effective program of enforcement of the Act's provisions. We have begun the process of analyzing the

Department's specific responsibilities under the bill and pledge that our enforcement effort will be fair and vigorous and that our technical assistance program will be thorough, creative and cost-effective. In addition, the Department of Justice is currently reviewing the impact of the Americans with Disabilities Act on its resources and organizational structure.

As a parent, as a former Governor, and as Attorney General, I have witnessed the many faces of discrimination confronting persons with disabilities. About 40 million people in this country are disabled by reason of some physical or mental handicapping condition. The mere existence of these handicapping conditions does not, for many of these individuals, prevent them from interacting freely with others in society, or from **[Page 212]** performing the same tasks that others perform on a daily basis. But persons with disabilities are all too often not allowed to participate because of stereotypical notions held by others in society — notions that have, in large measure, been created by ignorance and maintained by fear.

It is precisely these sorts of antiquated attitudes that have blocked people with disabilities from entering the mainstream of American life. Certainly attitudinal changes cannot be simply commanded or even legislated out of existence. No particular court order or single piece of legislation can alone change longstanding perception or misperceptions; regrettably, attitudes can only be reshaped gradually. One of the keys to this reshaping process, however, is to increase contact between and among people with disabilities and their more able-bodied peers. And an essential component of that effort is the enactment of a comprehensive law that promotes the integration of people with disabilities into our communities, schools, and work places.

Mr. Chairman, the "Americans with Disabilities Act" can be the vehicle that brings persons with disabilities into

the mainstream of American life. We have an historic opportunity to move legislation through the Congress given the broad support for its purpose. On behalf of the Administration, I pledge to this Committee and to the Congress our support to produce a bill that can be signed this year.